

FIGURE 12-3. SAMPLE CERTIFICATE HOLDER REPLY

*

Date: _____

To: Assistant Chief Counsel
ADDRESS

*

Subject: Notice of Proposed Certificate Action

In reply to your notice of proposed certificate action and the accompanying information sheet, I elect to proceed as indicated below:

1. ☐ I hereby transmit my certificate. I understand that an order will be issued as proposed in the notice. The order will be effective on the date I mail this reply. I ALSO UNDERSTAND THAT I AM WAIVING MY RIGHT TO APPEAL THE ORDER TO THE NATIONAL TRANSPORTATION SAFETY BOARD.

2. ☐ I request that the order be issued so that I may appeal directly to the National Transportation Safety Board.

3. ☐ I hereby submit my answer to your notice and request that my answer and any information attached thereto be considered in connection with the allegations set forth in your notice.

4.a. ☐ I hereby request a telephonic informal conference to discuss this matter with an FAA attorney. (An attorney will call you at the telephone number you provide here:

() _____. You will be provided at least 2 weeks advance notice of the date and time of this conference.)

NOTE: If you choose to discuss this matter informally by telephone, you should provide any documents or other information you wish to have considered on your behalf before the date of the informal conference.

*

7/16/96

*

b. ☐ I hereby request an in-person informal conference with an FAA attorney to discuss this matter at _____ (choose an FAA office from the attached list).

c. ☐ I hereby request an in-person informal conference with an FAA attorney to discuss this matter at _____. I am requesting an in-person informal conference at this location because _____

I have also indicated an alternate location from the attached list under item 4.b. in the event the FAA is unable to grant my request under this option.

5. ☐ I hereby claim entitlement to a waiver of penalty under the Aviation Safety Reporting Program and enclose evidence that a timely report was filed with NASA.

Certificate holder:

Signature: _____

Address: _____

Telephone: _____

☐ I request that future documents in this case be sent to my representative:

Name: _____

Address: _____

Telephone: _____

*

FIGURE 12-4. SAMPLE RECEIPT FOR CERTIFICATE
AND WAIVER OF APPEAL RIGHTS.

Certificate holder: _____

Case no.: _____

I, _____, hereby surrender my

_____ certificate to the undersigned attorney for the

FAA, for a period of _____ days/for cancellation. I understand

that an order of suspension/revocation will be issued as proposed in

the Notice of Proposed Certificate Action issued in this case on

_____, except as follows: _____

I hereby waive my right to appeal the order to the National Transportation
Safety Board.

Certificate holder date

FAA Attorney date

FIGURE 12-5. SAMPLE ORDER OF SUSPENSION
(Federal Aviation Act)

May 16, 1988

88GL140000

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Captain Jonathan V. Doaks
25 Duval Drive
East Miami, Illinois

ORDER OF SUSPENSION

On April 5, 1988, you were advised by mail through a notice of proposed certificate action of the reasons why we proposed to suspend your airline transport pilot certificate, No. 1000000, for a period of 30 days.

After a consideration of all the evidence presently a part of this proceeding, including the information you presented at the informal conference held in the Office of the Assistant Chief Counsel, Kansas City, Missouri, on May 9, 1988, it has been determined that you violated the Federal Aviation Regulations because of the following circumstances:

1. You are now, and at all times mentioned herein, the holder of Airline Transport Pilot Certificate No. 1000000.
2. On or about January 15, 1988, you acted as pilot in command of a Jones Airlines Boeing 720 aircraft operating on instrument flight rules in air transportation as scheduled Flight 13 from O'Hare International Airport, Chicago, Illinois, to Willow Run Airport, Ypsilanti, Michigan.
3. During the above-described flight, Flight 13 was instructed by air traffic control (ATC) to maintain an altitude of 8,000 feet.
4. Notwithstanding said instruction, Flight 13 descended to an altitude of 7,400 feet, 600 feet below the assigned altitude.
5. Your operation of Flight 13, in the manner and under the circumstances described above, was careless so as to endanger the life and property of another..

By reason of the foregoing facts and circumstances, you violated the following Federal Aviation Regulations:

1. Section 91.75(b), in that, in an area in which air traffice control is exercised, you operated an aircraft contrary to an ATC instruction without obtaining an amended instruction; and
2. Section 91.9, in that you operated an aircraft in a careless or reckless manner so as to endanger the lives and property of another.

12/14/88

By reason of the foregoing, the Administrator has determined that safety in air commerce or air transportation and the public interest require the suspension of your airline transport pilot certificate.

NOW, THEREFORE, IT IS ORDERED, pursuant to the authority vested in the Administrator by Section 609 of the Federal Aviation Act of 1958, as amended, that your airline transport pilot certificate, No. 1000000, be suspended, effective May 23, 1988, said suspension to continue in force for a period of 30 days thereafter. In the event you fail to surrender your certificate to the Office of the Assistant Chief Counsel, Federal Aviation Administration, Address, on or before May 23, 1988, said suspension shall continue in effect until 30 days subsequent to the actual surrender thereof.

Assistant Chief Counsel

By: Trial Attorney

APPEAL

You may appeal from this order within 20 days from the date it is served by filing a Notice of Appeal with the Office of Administrative Law Judges, National Transportation Safety Board, Room 822, 800 Independence Ave., S.W., Washington, D.C. 20594.

Part 821 of the Board's Rules of Practice (49 C.F.R. Part 821) applies to such an appeal. An original and three (3) copies of your appeal must be filed with the National Transportation Safety Board (NTSB). In the event you appeal, a copy of your notice must also be furnished to the Office of Chief Counsel/Office of Assistant Chief Counsel at the address noted in the foregoing Order.

The filing of a timely appeal will stay the effectiveness of this Order during the pendency of that appeal before the NTSB. If you appeal to the NTSB, a copy of this Order will be filed with the NTSB and will serve as the Administrator's complaint in this proceeding.

CERIFICATE OF SERVICE

I hereby certify that this Order has been mailed this date by certified mail, addressed to:

Legal Clerk _____ date _____

FIGURE 12-6. SAMPLE LANGUAGE FOR ORDER OF SUSPENSION
WITH WAIVER OF PENALTY.

NOW, THEREFORE, IT IS ORDERED, pursuant to Section 609(a) of the Federal Aviation Act of 1958, as amended, that any pilot certificate held by you, including airline transport pilot certificate no. XXX, be and hereby is suspended for XX days.

Assistant Chief Counsel

By:
Trial Attorney

WAIVER OF PENALTY

The Administrator has determined that you are entitled to a waiver of penalty under the Aviation Safety Report Program, by reason of your having filed a timely report of the incident which is the subject of this case under that program, and otherwise meeting all of the requirements for such waiver. Accordingly, the suspension of your airman certificate ordered herein, although remaining a matter of record, will not actually be imposed. You will not be required to surrender your airman certificate, and may continue to use your certificate without interruption.

[include appeal rights]

FIGURE 12-7. SAMPLE EMERGENCY ORDER
(Federal Aviation Act)

December 1, 1988

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Failure Pilot School, Inc.
410 Forest Drive
San Angelo, Texas

EMERGENCY ORDER OF REVOCATION

Take notice that this office is in receipt of an investigative report from which it appears that Failure Pilot School, Inc. (Failure) violated the Federal Aviation Regulations by reason of the following circumstances:

1. Failure now holds, and at all times material herein held, Air Agency Certificate Number AA-001-10, with approval to operate as a Pilot School, with Mr. Les Passem as President and Mr. Will Testem as Chief Flight Instructor.
2. On or about October 5, 17, 28, and 30, 1988, Failure gave dual flight instruction to a student using Mr. Passem as an instructor.
3. At the time of the above-described instruction, Mr. Passem was not qualified to give flight instruction in that he had not been briefed in regard to the objectives and standards of that course by the chief flight instructor.
4. On or about November 1, 2, 4, and 5, 1988, Failure gave dual flight instruction to three students using Mr. Woody Flunkem as the instructor.
5. At the time of the above-described instruction, Mr. Flunkem was not qualified to give flight instruction in that he had not been briefed in regard to the objectives and standards of that course by the chief flight instructor.
6. During the period of May 25, through July 22, 1988, Failure gave Joe Student multiengine flight training.
7. At the time of the above-described training, Failure did not meet the requirements for approval of a multiengine training course in that it did not have a qualified chief flight instructor for the multiengine course.
8. By letter dated July 9, 1988, Failure was notified by the Administrator that its multiengine course certification was suspended due to the lack of a qualified chief flight instructor.

9. Subsequent to the above-described notification, Failure continued to give multiengine course instruction when it did not have a qualified chief flight instructor for the course.

By reason of the foregoing facts and circumstances, Failure violated the following Federal Aviation Regulations:

1. Section 141.3, which prohibits a person from operating a certificated pilot school in violation of a pilot school certificate.
2. Section 141.89(b), which prohibits the holder of a pilot school certificate from giving instruction or training to a student who is enrolled in an approved course of training unless each instructor or chief instructor meets the qualifications specified in the holder's approved course of training and the appropriate requirements of Part 141.
3. Section 141.81(c), which prohibits an instructor from being used in an approved course of training until he has been briefed in regard to the objectives and standards of that course by the designated chief instructor or his assistant.

By reason of the circumstances set forth in the foregoing paragraphs, the Administrator has determined that Failure lacks the degree of care, judgment, and responsibility required of the holder of an Air Agency Certificate. Therefore, the Administrator finds that safety in air commerce or air transportation and the public interest require the revocation of Air Agency Certificate issued to Failure. Furthermore, the Administrator finds that an emergency exists and safety in air commerce or air transportation requires the immediate effectiveness of this order.

NOW THEREFORE, IT IS ORDERED, pursuant to the authority vested in the Administrator by Sections 609 and 1005(a) of the Federal Aviation Act of 1958, as amended, that:

1. Air Agency Certificate No. AA-0001-10 issued to Failure Airline, Inc., is revoked on an emergency basis.
2. Such revocation shall become effective as of the date of this order.
3. Failure's certificate must be surrendered at once by mail or delivery to the Assistant Chief Counsel, address.

Assistant Chief Counsel

By: _____
Trial Attorney

APPEAL

You may appeal from this order within 10 days from the date it is served by filing a notice of appeal with the National Transportation Safety Board, Room 822, 800 Independence Ave., S.W., Washington, D.C. 20594. Due to the fact that your certificate has been revoked on an emergency basis, the Emergency Order of Revocation will remain in effect during the pendency of any proceedings before the National Transportation Safety Board (NTSB). Part 821 of the Board's Rules of Practice in Air Safety Proceedings applies to such an appeal. An original and three (3) copies of your appeal must be filed with the NTSB. In the event you appeal, a copy of your Notice of Appeal must be furnished to the Office of Chief Counsel/Office of Assistant Chief Counsel at the address noted in the Emergency Order.

Whether or not you choose to appeal from this Emergency Order, you must surrender Air Agency Certificate No. AA-0001-10 to the Chief Counsel/Assistant Chief Counsel, address.

In the event of an appeal to the NTSB, a copy of this order will be filed with the NTSB and will serve as the Administrator's complaint.

FIGURE 12-8. SAMPLE CIVIL PENALTY LETTER
(Federal Aviation Act)

September 31, 1988

Case No. 88SW234567CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Whimsicality Airways, Inc.
Vieux Carre
New Orleans, Louisiana

Attention: Ms. Karen Gibbs
President

Dear Ms. Gibbs:

We have received a report of investigation from which it appears that during the period January 21 through January 22, 1988, Whimsicality Airways, Inc. (WAI), the holder of Air Carrier Operating Certificate No. GRAS-000M, operated two Lockheed L-1011 aircraft, N12U and N34R, on a total of fifteen (15) flights after it had removed the Auxiliary Power Unit (APU) generator from said aircraft. WAI's Minimum Equipment List (MEL) for said aircraft authorizes operation of said aircraft with an inoperative APU generator system, but WAI's MEL does not authorize operations with the APU generator removed from the aircraft. The removal of the APU generators rendered civil aircraft N12U and N34R unairworthy.

WAI performed maintenance on said aircraft utilizing unacceptable methods, techniques, and practices and further performed said maintenance in a manner so the aircraft was not equal to its original or properly altered condition.

Based on this information, it appears that WAI violated Sections 121.153(a)(2); 121.105; 43.13(a); and 43.13(b) of the Federal Aviation Regulations. Under Section 901(a) of the Federal Aviation Act of 1958, as amended, WAI is subject to a civil penalty not to exceed \$10,000 for each of the violations noted. After careful consideration of all available information, we are willing to accept \$75,000 in settlement of this matter. An explanation of the settlement procedures is enclosed.

We will take no further action for a period of 14 days after WAI's receipt of this letter in order to afford WAI an opportunity to submit the suggested amount in settlement.

Sincerely,

Assistant Chief Counsel

By: _____
Trial Attorney

Enclosure

Chap 12

Page 183

**FIGURE 12-9. SAMPLE INFORMATION SHEET TO ACCOMPANY
A CIVIL PENALTY LETTER**

**INFORMATION REGARDING CIVIL PENALTIES
UNDER TITLE 49 U.S.C. SECTION 46301**

★

Under 49 U.S.C. § 46301, any person who violates pertinent provisions of 49 U.S.C. §§ 40101, et seq., or any rule, regulation, or order issued thereunder, is subject to a civil penalty for each violation. The maximum civil penalty for each violation is also prescribed by law, as specified in the letter to which this is attached.

The statute authorizes the Administrator to compromise civil penalties. The attached letter states the sum that the FAA would accept in full settlement of the alleged violation or violations described therein. Your acceptance of the settlement proposed in the attached letter will not constitute an admission of the alleged violation(s).

You are not required to accept the offer of settlement in the attached letter or to make a counter-offer of settlement. If you do not wish to settle the case, the matter will be presented to a U.S. attorney, who may bring a civil action for the full amount of the civil penalty prescribed by law. A U.S. district court will decide all issues of fact and law, following a trial at which you will have the right to present evidence on your behalf and cross-examine the Administrator's witnesses.

WITHIN THIRTY (30) DAYS FROM THE RECEIPT OF THIS LETTER, you may proceed in one of the following ways by marking the appropriate box(es) on the attached election sheet and returning it by mail or personal-delivery to the address provided below. An explanation of each option is set forth below.

1. You may submit the amount suggested in the attached letter, by certified check or money order payable to the

★

7/16/96

Federal Aviation Administration, to the Office of Accounting, [insert address of appropriate accounting office].

2. You may wish to have the issues of fact and law in this matter decided by the U.S. district court. If so, please advise us immediately.

3. You may submit, in writing, information and evidence demonstrating that a violation of the regulations was not committed or that, if it were, the facts and circumstances do not warrant the proposed civil penalty. The FAA will consider the information you provide in determining whether, or not, to pursue a civil penalty action by forwarding the matter to the Department of Justice for prosecution or not as well as the amount of any civil penalty sought. You may submit this information in conjunction with a request for an informal conference under paragraph 4.

4. You may request an opportunity to discuss the matter with an FAA attorney by a telephonic informal conference, or at an in-person informal conference at one of the following locations: an FAA regional office; the FAA Aeronautical Center in Oklahoma City; the FAA Southern Region Branch Office in Orlando, Florida; or FAA Headquarters in Washington, DC. A list of the addresses of these offices (hereafter referred to as "the Informal Conference Location list" or "the list") is attached to the enclosed reply form.

A request for an in-person informal conference at any of the offices on the Informal Conference Location list will be granted, regardless of whether the office you choose is the office that issued the notice to which this information sheet is attached.

*

If you choose an office on the Informal Conference Location list other than the office that issued the notice, the case ordinarily will be transferred to the office you request for full disposition and handling in accordance with the FAA's existing transfer policy; which is set forth in paragraph 208(e) of FAA Order No. 2150-3A, *provided that*

- (1) a transfer is in the public interest, and
- (2) the transfer is to an office more convenient to your domicile or principal place of business.

When conditions (1) and (2) are not present, the case will be transferred to the office you request for purposes of the informal conference only. Moreover, the office receiving the case only for purposes of the informal conference will consult and coordinate with the office that issued the notice before settling or otherwise disposing of the case after the informal conference.

You also may request an in-person informal conference at an FAA office other than those on the Informal Conference Location list. If you do so, you should indicate on the response form your reason for requesting that particular location. NOTE: Requests for in-person informals at locations not on the list will be granted only in very limited circumstances. You should not, therefore, expect to have an in-person informal conference at a location other than those on the list. The FAA attorney assigned to your case has discretion to grant a request for an in-person informal conferences at a location other than those on the list only when (1) because of unusual circumstances, the public interest is better served by holding an in-person informal conference at such location, or (2) an in-person informal conference can be scheduled to coincide with other previously scheduled business at the location requested. In addition, the FAA attorney must be able to schedule the conference within approximately 90 days of the date you request an informal conference. Because of these

*

7/16/96

*

restrictions, you are requested to indicate both the FAA office you prefer and one of the offices from the Informal Conference Location list.

To elect a telephone informal conference, choose option 4.a. on the reply form. To elect an in-person informal conference at one of the locations on the Informal Conference Location list, choose option 4.b. To elect an in-person informal conference at a location other than those on the list, choose option 4.c.

IMPORTANT: The informal conference is intended to provide you with an opportunity to present your reasons why the FAA should not proceed with the action as proposed. It also is intended to provide you with an opportunity to present any supporting documentation or information you wish the FAA to consider before the agency decides whether to proceed with the proposed action.

All correspondence in this matter should be forwarded to the following address:

Office of the Assistant Chief Counsel
ADDRESS

If the certificate holder is an individual:

PRIVACY ACT NOTICE

This notice is provided in accordance with Section (e)(3) of the Privacy Act, 5 U.S.C. § 552a(e)(3), and concerns the information requested in the letter or form with which this Notice is enclosed.

A. Authority. This information is solicited pursuant to 49 U.S.C. §§ 40101, et seq., and regulations issued thereunder, codified in Part 13 of Title 14 of the Code of Federal Regulations.

*

*

Submitting the telephone number is voluntary. The request for information is intended to provide you with an opportunity to participate in the investigation.

B. Principal purpose. The requested information is intended to assist us in contacting you regarding this enforcement case.

C. Routine uses. Records from this system of records may be disclosed in accordance with the routine uses set forth in System of Records No. DOT/FAA 847, as published from time to time in the Federal Register.

D. Effect of failure to respond: If you do not provide the requested information, there may be delay in contacting you regarding this enforcement case.

*

FIGURE 12-10. SAMPLE REPLY TO CIVIL PENALTY LETTER

*

Date: _____

To: Assistant Chief Counsel
Address

Subject: Civil Penalty Letter

In reply to your letter proposing to settle this matter and the accompanying information sheet, I elect to proceed as indicated below:

1. ☐ I hereby submit the amount proposed in settlement of this matter.
2. ☐ I wish to have this matter decided by a U.S. district court.
3. ☐ I hereby submit my response to your letter and request that my response, and any information attached to it, be considered in connection with the allegations set forth in your letter.
4. a. ☐ I hereby request a telephonic informal conference to discuss this matter with an FAA attorney. (An attorney will call you at the telephone number you provide here: () _____. You will be provided at least 2 weeks advance notice of the date and time of this conference.)
NOTE: If you choose to discuss this matter informally by telephone, you should provide any documents or other information you wish to have considered on your behalf before the date of the informal conference.
- b. ☐ I hereby request an in-person informal conference with an FAA attorney to discuss this matter at _____ (choose an FAA office from the attached list).

*

7/16/96

*

c. ☐ I hereby request an in-person informal conference with an FAA attorney to discuss this matter at _____ . I am requesting an in-person informal conference at this location because _____

I have also indicated an alternate location from the attached list under item 4.b. in the event the FAA is unable to grant my request under this option.

Certificate holder:

Signature: _____

Address: _____

Telephone: _____

☐ I request that future documents in this case be sent to my representative:

Name: _____

Address: _____

Telephone: _____

*

12/14/88

2150.3A

**FIGURE 12-11. SAMPLE FORM OF RECEIPT FOR CIVIL PENALTIES
(Federal Aviation Act)**

November 15, 1988

Whimsicality Airways, Inc.
Vieux Carre
New Orleans, Louisiana

Attention: Ms. Karen Gibbs
President

RE: Case No. 88SW234567

Dear Ms. Gibbs:

Receipt is acknowledged of your check (money order) of November 1, 1988, in the amount of \$75,000, submitted as an offer in settlement of your alleged violations of the Federal Aviation Regulations.

This amount is hereby accepted in full settlement of any civil penalty incurred under Section 901(a) of the Federal Aviation Act of 1958, as amended, by reason of Whimsicality Airways' alleged violation of the Federal Aviation Regulations, as described in our letter of September 30, 1988. It is understood that this settlement does not constitute an admission of any violation.

You may consider this matter closed.

Sincerely,

Assistant Chief Counsel

12/14/88

FIGURE 12-12. SAMPLE COMPLAINT FOR REFERRAL TO U.S. ATTORNEYS
(Federal Aviation Act)

UNITED STATES OF AMERICA

DISTRICT OF _____

UNITED STATES OF AMERICA,

Plaintiff

v.

RICH AIR,

Defendant.

C O M P L A I N T

The United States of America for its complaint against the defendant, Rich Air, alleges:

I

This action is being brought by the United States of America to recover a civil penalty in the sum of \$60,000 from the defendant, Rich Air, under Section 901(a)(1) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1471(a)). Jurisdiction is conferred upon this court by Section 1007(b) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1487(b)), and by 28 U.S.C. 1345.

II

The defendant, Rich Air, is a resident of and conducts business in the City of Chicago, County of Cook, State of Texas, and is the holder of Federal Aviation Administration Air Carrier Operating Certificate No. 00001 and operations specifications issued thereunder to engage in various operations in air transportation under Part 121 of the Federal Aviation Regulations.

III

Rich Airlines has adopted and is responsible for carrying out an Air Carrier Security Program in accordance with the provisions of Part 108 of the Federal Aviation Regulations.

Chap 12

IV

During the period of January 29 to 31, 1988, Federal Aviation Administration security inspectors conducted an inspection of air carrier security operations at El Paso International Airport, El Paso, Texas.

V

During the course of the inspection, the inspectors determined that practical testing on test objects, including a capsulated weapon, dynamite bomb, hand grenade, pipe bomb, and toy pistol were not being conducted under realistic conditions as required by Section XIII(B)(2)(c) of the Company's Security Program, in that the test objects were passed through the screening system in a test period of 30-45 minutes rather than at random, over an extended period of time, as required, to simulate realistic conditions.

VI

The following persons had been given practical tests as part of their initial training under other than realistic conditions as described above, and subsequently sent to perform passenger screening functions requiring independent determinations: Fred Flintstone, Barney Rubble, Dino Dog, Cat Mandoo, Archie Bunker, and Mike Stivek.

VII

By reason of the foregoing, the defendant, Rich Air, violated the provisions of Section 108.5(a) of the Federal Aviation Regulations in that it failed to provide initial training under realistic conditions as required by Section XIII(B)(2)(c) of its Air Carrier Security Program.

VIII

By virtue of Section 901(a) of the Federal Aviation Act of 1958, as amended, 49 U.S.C. 1471(a), the defendant is subject to a civil penalty not to exceed \$10,000 for each of the foregoing violations of the Federal Aviation Regulations.

WHEREFORE, plaintiff demands judgment against defendant in the sum of \$60,000 together with its costs therein.

Respectfully Submitted this _____ day of _____, 19__.

UNITED STATES OF AMERICA
UNITED STATES ATTORNEY

ASSISTANT UNITED STATES ATTORNEY

12/14/88

2150.3A

**FIGURE 12-13. SAMPLE LANGUAGE FOR NOTICE OF PROPOSED CIVIL PENALTY
(Federal Aviation Act)**

Under Section 901(a) of the Federal Aviation Act, as amended, you are subject to a civil penalty not to exceed \$1,000 for each of the violations noted. By reason of the foregoing facts and circumstances, we propose to assess a civil penalty in the amount of \$4,000.

Unless we receive, in writing, your choice of the alternatives provided and set forth on the enclosed information form, on or before 30 days after you receive this Notice, we will issue an order Assessing Civil Penalty as proposed, and you will have no further right to appeal the order.

Assistant Chief Counsel

By: _____
Attorney

Enclosures

FIGURE 12-14. SAMPLE INFORMATION SHEET TO ACCOMPANY
NOTICE OF PROPOSED CIVIL PENALTY

INFORMATION REGARDING CIVIL PENALTIES
UNDER TITLE 49 U.S.C. SECTION 46301

*

Under 49 U.S.C. § 46301, any person who violates pertinent provisions of 49 U.S.C. §§ 40101, et seq., or any rule, regulation, or order issued thereunder, is subject to a civil penalty for each violation. The maximum assessment for each violation is also prescribed by law, as specified in the notice to which this is attached. The notice also states the amount of the proposed civil penalty for the alleged violation(s).

This proceeding is governed by the Federal Aviation Regulations (FAR) set forth in 14 C.F.R. § 13.16 and 14 C.F.R. Part 13, Subpart G. Copies of these regulations are enclosed. WITHIN THIRTY (30) DAYS AFTER YOU RECEIVE THE NOTICE TO WHICH THIS INFORMATION SHEET IS ATTACHED, you may elect to proceed in one or more of the following ways by marking the appropriate box(es) on the attached election sheet and returning it by mail or personal-delivery to the address provided below. An explanation of each option is set forth below.

1. You may submit the amount of the civil penalty specified in the notice by certified check or money order payable to the "Federal Aviation Administration" to the Office of Accounting [insert address of appropriate accounting office]. SUBMITTING THE AMOUNT OF CIVIL PENALTY CONSTITUTES YOUR AGREEMENT THAT AN ORDER ASSESSING CIVIL PENALTY IN THAT AMOUNT MAY BE ISSUED WITHOUT FURTHER NOTICE. SUBMITTING THE AMOUNT OF CIVIL PENALTY ALSO CONSTITUTES YOUR AGREEMENT THAT YOU WAIVE YOUR RIGHT TO A HEARING IN THIS MATTER.

*

★

2. You may submit, in writing, information and evidence demonstrating that a violation of the regulations was not committed or that, if it were, the facts and circumstances do not warrant the proposed civil penalty. Information provided will be considered in determining whether a civil penalty should be assessed or imposed and the amount of any such civil penalty. This information may be submitted in conjunction with a request for an informal conference under paragraph 5. Choosing this option will not affect your right to a hearing, unless you also elect paragraph 4.

3. You may submit, in writing, information and records indicating that you are financially unable to pay the proposed civil penalty, or showing that payment of the proposed penalty would prevent you from continuing in business. Choosing this option will not affect your right to a hearing, unless you also elect paragraph 4.

4. You may request that a civil penalty be assessed in a specific amount other than that proposed in the notice. If you choose this option, you should explain why a reduction in the civil penalty is appropriate, and provide any supporting documentation. The information you provide will be considered in determining whether the amount you specified should be assessed. If the FAA accepts your offer, your request constitutes your agreement that an order assessing civil penalty in that amount may be issued without further notice. YOUR REQUEST ALSO CONSTITUTES YOUR AGREEMENT THAT YOU WAIVE YOUR RIGHT TO A HEARING. IF THE FAA DOES NOT ACCEPT YOUR OFFER, HOWEVER, YOUR RIGHT TO A HEARING WILL NOT BE AFFECTED.

5. You may request an opportunity to discuss the matter with an FAA attorney by a telephonic informal conference, or at an in-person informal conference at one of the following locations: an FAA regional office; the FAA Aeronautical Center in Oklahoma City; the FAA Southern Region Branch Office in Orlando, Florida; or FAA Headquarters in

★

*

Washington, DC. A list of the addresses of these offices (hereafter referred to as "the Informal Conference Location list" or "the list") is attached to the enclosed reply form.

A request for an in-person informal conference at any of the offices on the Informal Conference Location list will be granted, regardless of whether the office you choose is the office that issued the notice to which this information sheet is attached.

If you choose an office on the Informal Conference Location list other than the office that issued the notice, the case ordinarily will be transferred to the office you request for full disposition and handling in accordance with the FAA's existing transfer policy, which is set forth in paragraph 208(e) of FAA Order No. 2150-3A, provided that

- (1) a transfer is in the public interest, and
- (2) the transfer is to an office more convenient to your domicile or principal place of business.

When conditions (1) and (2) are not present, the case will be transferred to the office you request for purposes of the informal conference only. Moreover, the office receiving the case only for purposes of the informal conference will consult and coordinate with the office that issued the notice before settling or otherwise disposing of the case after the informal conference.

You also may request an in-person informal conference at an FAA office other than those on the Informal Conference Location list. If you do so, you should indicate on the response form your reason for requesting that particular location. NOTE: Requests for in-person informals at locations not on the list will be granted only in very limited circumstances. You should not, therefore, expect to have an in-person informal conference at a location other than those on the list. The FAA attorney assigned to your case has discretion to grant a request for an in-person

*

*

informal conferences at a location other than those on the list only when (1) because of unusual circumstances, the public interest is better served by holding an in-person informal conference at such location, or (2) an in-person informal conference can be scheduled to coincide with other previously scheduled business at the location requested. In addition, the FAA attorney must be able to schedule the conference within approximately 90 days of the date you request an informal conference. Because of these restrictions, you are requested to indicate both the FAA office you prefer and one of the offices from the Informal Conference Location list.

To elect a telephone informal conference, choose option 5.a. on the reply form. To elect an in-person informal conference at one of the locations on the Informal Conference Location list, choose option 5.b. To elect an in-person informal conference at a location other than those on the list, choose option 5.c.

If you request an informal conference with an FAA attorney, do not also request at this time a formal hearing under 14 C.F.R. § 13.16, i.e., option 7. Your request for an informal conference will not affect your right to request a formal hearing later.

IMPORTANT: The informal conference is intended to provide you with an opportunity to present your reasons why the FAA should not proceed with the action as proposed. It also is intended to provide you with an opportunity to present any supporting documentation or information you wish the FAA to consider before the agency decides whether to proceed with the proposed action. Any additional information you submit will be given our careful consideration. Since the attached letter may become a part of the publicly available records, you may wish to submit a letter which would be included in these records.

*

*

6. You may request that the FAA impose a civil penalty without making findings of violations, and submit the reasons and any additional information in writing (with appropriate supporting documentation) to support your request. If the FAA accepts your offer, your request will constitute your agreement that a Compromise Order in that amount may be issued. YOUR REQUEST WILL ALSO CONSTITUTE YOUR AGREEMENT THAT YOU WAIVE YOUR RIGHT TO A HEARING. IF THE FAA DOES NOT ACCEPT YOUR OFFER, HOWEVER, YOUR RIGHT TO A HEARING WILL NOT BE AFFECTED.

7. You may request a hearing in accordance with section 13.16 of the FAR. Your request must be dated and signed. If you request a hearing, a Complaint will be filed and an administrative law judge will be appointed to decide the case. At the hearing, held under Subpart G of 14 C.F.R. Part 13, the agency will present witnesses and other evidence. You also will have the opportunity to present witnesses and other evidence. The FAA will have the burden of proof. At the conclusion of the hearing, all issues of fact and law will be decided and a decision will be rendered whether, and in what amount, a civil penalty will be assessed. If either party, the agency or you, is dissatisfied with the judge's decision, that party can appeal the judge's decision to the FAA decisionmaker. If you are dissatisfied with the FAA decisionmaker's decision, you may seek review of the FAA decisionmaker's decision in the United States Courts of Appeals.

Your request for a hearing must be made to the Hearing Docket, Federal Aviation Administration, 800 Independence Avenue, SW., Room 924A, Washington, DC, 20591, Attention: Hearing Docket Clerk. You must mail a copy to the FAA attorney handling this case at the address indicated below.

8. If you are an individual and have filed an FAA Aviation Safety Report with the National Aeronautics and Space Administration (NASA) concerning the incident or occurrence set forth in the attached Notice of Proposed

*

*

Civil Penalty, you may be entitled to a waiver of any penalty. THIS PROGRAM DOES NOT APPLY TO VIOLATIONS OF FEDERAL RULES GOVERNING CIVIL AVIATION SECURITY, SUCH AS CARRYING WEAPONS ON AN AIRCRAFT. You may present evidence of entitlement to a waiver of penalty under the ASRP in connection with options 2, 3, 4, 5, 6, or 7, above, or you may present it separately, under this option (i.e., option 8). YOUR CLAIM OF ENTITLEMENT TO A WAIVER OF PENALTY UNDER THIS OPTION CONSTITUTES YOUR AGREEMENT THAT AN ORDER ASSESSING CIVIL PENALTY MAY BE ISSUED WITHOUT FURTHER INFORMAL PROCEEDINGS. In the event that you prove you are entitled to a waiver of penalty, an order assessing civil penalty will be issued finding you in violation but waiving imposition of any civil penalty. Following issuance of the order, you will have the right to appeal the order to the FAA decisionmaker under the provisions of 49 U.S.C. §§ 46301(d)(2) and (d)(7). You will be entitled to waiver only if all of the following are found:

a. That this violation was inadvertent and not deliberate;

b. That this violation did not involve a criminal offense, or an accident, or disclose a lack of competency or qualification to be the holder of a certificate;

c. You have not paid a civil penalty pursuant to 49 U.S.C. §§ 46301, et seq. (formerly Section 901 of the Federal Aviation Act), or been found in any prior FAA enforcement action to have committed a violation of 49 U.S.C. §§ 40101, et seq., for a period of 5 years before the date of the occurrence; and

d. You prove that within 10 days after the violation, you completed and delivered or mailed a written report of the incident or occurrence to NASA under the Aviation Safety Reporting Program.

*

7/16/96

2150.3A CHG 22

*

Please address all communications in this matter to the FAA attorney who signed the Notice at the following address:

Office of Assistant Chief Counsel
Federal Aviation Administration
ADDRESS

Your response to the Notice of Proposed Civil Penalty may be delivered personally to the Office of the Assistant Chief Counsel for the _____ Region at the above address during normal business hours.

Telephone: _____ (Collect calls cannot be accepted).

If you are an individual:

PRIVACY ACT NOTICE

This notice is provided in accordance with Section (e)(3) of the Privacy Act, 5 U.S.C. § 552a(e)(3), and concerns the information requested in the letter or form with which this notice is enclosed.

A. Authority. This information is solicited pursuant to 49 U.S.C. §§ 40101, et seq., and regulations issued thereunder, codified in Part 13 of Title 14 of the Code of Federal Regulations. Submitting your telephone number is voluntary. This request for information is intended to provide you with an opportunity to participate in the investigation.

B. Principal purpose. The requested information is intended to assist us in contacting you regarding this enforcement case.

*

*

C. Routine uses. Records from this system of records may be disclosed in accordance with the routine uses as set forth in System of Records No. DOT/FAA 847, as published from time to time in the Federal Register.

D. Effect of failure to respond. If you do not provide the requested information, there may be delay in contacting you regarding this enforcement case, and you may forfeit your right to a hearing on the merits of this case.

*

**FIGURE 12-15. SAMPLE REPLY FORM FOR NOTICE OF PROPOSED
CIVIL PENALTY**

*

Date _____

Assistant Chief Counsel for the _____ Region
Federal Aviation Administration
P.O. Box 55555
City, State 00000

Subject: Notice of Proposed Civil Penalty

In reply to your Notice of Civil Penalty, I elect to proceed as indicated by my check mark beside the numbered paragraph below:

1. ☐ I hereby submit the amount of the proposed civil penalty with the understanding that an order assessing a civil penalty will be issued in that amount without further notice. I ALSO UNDERSTAND THAT I AM WAIVING MY RIGHT TO A HEARING.
2. ☐ I hereby submit evidence and information, demonstrating that a violation of the regulations did not occur or that the amount of the penalty is not warranted by the circumstances.
3. ☐ I hereby submit information and records showing that I am financially unable to pay the proposed civil penalty, or that payment of the penalty would prevent me from continuing in business.
4. ☐ I hereby request that a civil penalty be assessed in the amount of \$_____ and I submit the reasons for the reduction. My request constitutes my agreement that if this offer is accepted by the FAA, an order assessing civil penalty in the amount I have specified may be issued without

*

*

further notice. MY REQUEST ALSO CONSTITUTES MY AGREEMENT THAT I HAVE WAIVED MY RIGHT TO A HEARING IF MY OFFER IS ACCEPTED. IF THE FAA DOES NOT ACCEPT THIS OFFER, HOWEVER, MY RIGHT TO A HEARING IS NOT AFFECTED.

5. a. ☐ I hereby request a telephonic informal conference to discuss this matter with an FAA attorney. (An attorney will call you at the telephone number you provide here: ☐ _____). You will be provided at least 2 weeks advance notice of the date and time of this conference.)
NOTE: If you choose to discuss this matter informally by telephone, you should provide any documents or other information you wish to have considered on your behalf before the date of the informal conference.

b. ☐ I hereby request an in-person informal conference with an FAA attorney to discuss this matter at _____ (choose an FAA office from the attached list).

c. ☐ I hereby request an in-person informal conference with an FAA attorney to discuss this matter at _____ . I am requesting an in-person informal conference at this location because _____

I have also indicated an alternate location from the attached list under item 5.b. in the event the FAA is unable to grant my request under this option.

6. ☐ I hereby request that the FAA impose a civil penalty without making findings of violations, and submit my reasons. My request constitutes my agreement that if this offer is accepted, a compromise order will be issued in the amount set forth in the Notice of Proposed Civil Penalty. MY REQUEST ALSO CONSTITUTES MY AGREEMENT THAT IF THIS OFFER IS ACCEPTED, I HAVE WAIVED MY RIGHT TO A HEARING.

*

7/16/96

2150.3A CHG 22

*

7. ☐ I hereby request a hearing in accordance with Subpart G of Part 13 of the Federal Aviation Regulations with the understanding that a Complaint will be filed. I request that the hearing be held in _____.
I am sending this request both to the FAA attorney at (INSERT ADDRESS OF THE APPROPRIATE OFFICE OF THE ASSISTANT CHIEF COUNSEL), and to the Hearing Docket, Federal Aviation Administration, 800 Independence Avenue, SW., Room 924A, Washington, DC 20591, Attention: Hearing Docket Clerk.

8. ☐ I hereby claim entitlement to a waiver of penalty under the Aviation Safety Reporting Program and enclose evidence that a timely report was filed. As to the allegations of fact and violations --

☐ I request that an order assessing civil penalty with waiver of penalty be issued and I waive my right to a hearing.

☐ I request a hearing in this matter in accordance with paragraph 7, above.

Signature: _____
Name: _____
Address: _____

Telephone: _____
Date: _____
Case No.: _____

☐ I request that future documents in this case be sent to my representative:

Name: _____
Address: _____

Telephone: _____

*

12/14/88

2150.3A

FIGURE 12-16. SAMPLE ORDER OF CIVIL PENALTY
(Federal Aviation Act)

September 6, 1988

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Adele Transport, Inc.
3 Coffee Run
Carson City, Nevada

Re: Case No. 88WP456789

ORDER OF CIVIL PENALTY

On July 31, 1988, Adele Transport, Inc. (ATI) was advised through a Notice of Proposed Civil Penalty that the FAA proposed to assess a civil penalty in the amount of \$30,000.

After consideration of all of the available information, it has been determined that:

1. Adele Transport, Inc. (ATI) is now, and at all times mentioned herein was, the holder of Air Carrier Operating Certificate No. WP-BCR-69S.

2. Between February 15, 1988, and February 30, 1988, ATI operated the following aircraft in scheduled passenger-carrying revenue flights when the inspection times had not been accomplished as required by Part D of its approved operations specifications, as follows:

<u>Item</u>	<u>Due</u>	<u>Hours Flown Between Checks</u>	<u>Overdue</u>
<u>Aircraft N24U - 7 flights</u>			
"L" Service Check	Every 50 hours	60	10 hours
<u>Aircraft N44ME - 5 flights</u>			
"M" Service Check	Every 75 hours	90	15 hours

3. ATI's failure to accomplish the above-described service checks rendered civil aircraft N24U and N44ME unairworthy.

By reason of the foregoing facts and circumstances, ATI violated the following Federal Aviation Regulations:

1. Section 121.3(a), in that ATI engaged in operations contrary to and in violation of its approved operations specifications, and

2. Section 121.153(a)(2), in that ATI operated aircraft when the aircraft were not in an airworthy condition.

NOW, THEREFORE, IT IS ORDERED, pursuant to Section 901(a)(1) of the Federal Aviation Act of 1958, as amended (49 U.S.C.App. §1471), that ATI be and hereby is subject to a civil penalty in the amount of \$30,000.

Assistant Chief Counsel

By: _____
Trial Attorney

ANSWER

You must answer this Order, which serves as the Complaint in this proceeding, not later than 30 days from the time it is served on you in accordance with Section 13.209 of the Rules of Practice for FAA Civil Penalty Actions (14 C.F.R. §13.209(f)). Failure to file an answer within 30 days will be deemed an admission of the truth of the allegations set forth in this Order and an Order Assessing Civil Penalty will be issued.

FIGURE 12-17. SAMPLE ORDER ASSESSING CIVIL PENALTY
(Federal Aviation Act)

June 31, 1988

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr. Al T. Tude
747 Boeing Circle
Deviation, LO

Re: Case No. 88WP678910

ORDER ASSESSING CIVIL PENALTY

On February 31, 1988, you were advised through a Notice of Proposed Civil Penalty that the FAA proposed to assess a civil penalty in the amount of \$1,200.

After consideration of all of the available information, including the information you presented at the March 15, 1988, informal conference, it has been determined that:

1. You are now, and at all times material herein were, the registered owner of civil aircraft N4U, a Cessna Model 310.
2. On or about December 31, 1987, N4U was operated on a passenger-carrying flight from Los Angeles, California, to Reno, Nevada.
3. Incident to said flight, at approximately 1659:02 GMT, N4U was issued and acknowledged a clearance from the Reno Air Traffic Control Tower (ATC) to descend to and maintain a flight level of 9,000.
4. Incident to said flight, at approximately 1702:12 GMT, Reno ATC observed N4U descend through 9,000 feet to 5,000 feet.
5. At no time mentioned herein did Reno ATC issue and nor did N4U receive a clearance to descend to a flight level of 5,000 feet.
6. As owner of N4U, you operated N4U on the above flight.
7. By reason of the facts and circumstances described above, you operated civil aircraft N4U in a careless manner so as to endanger the life or property of another.

12/14/88

By reason of the foregoing facts and circumstances, you violated the following Federal Aviation Regulations:

1. Section 91.75(a), in that you as operator of N4U deviated from an ATC clearance without having obtained an amended clearance when no emergency existed; and
2. Section 91.9, in that you as operator of N4U operated an aircraft in a careless manner so as to endanger the life or property of another.

NOW, THEREFORE, IT IS ORDERED, pursuant to Section 901(a)(1) of the Federal Aviation Act, as amended (49 U.S.C.App §1471), that you be and hereby are assessed a civil penalty in the amount of \$1,200.

[include one of the following]

You are hereby ordered to pay, immediately, the assessed amount by mailing or delivering a check or money order in the amount of \$1,200, payable to the Federal Aviation Administration, to Trial Attorney, Office of the Chief Counsel/Office of the Assistant Chief Counsel, address.

or

We hereby acknowledge receipt of your check in the amount of \$1,200 which we accept in full settlement of this matter. You may consider the matter closed.

Assistant Chief Counsel

By: _____
Trial Attorney

FIGURE 12-18. SAMPLE NOTICE OF PROPOSED CIVIL PENALTY
(Hazardous Materials Transportation Act)

January 22, 1988

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

ABC Airlines, Inc.
P.O. Box 5200
Jonesboro, Arkansas 72401

Re: Case No. 88WP123456; Docket No. 79-00 (HM)

NOTICE OF PROPOSED CIVIL PENALTY

Based on a report of investigation, it appears that:

1. On or about May 15, 16, and 17, 1987, ABC, Inc. (ABC) accepted and transported aboard a passenger-carrying flight a shipment of approximately 30 pounds of special fireworks and approximately 200 pounds of propellant explosive from Los Angeles, California, to Las Vegas, Nevada.
2. Special fireworks is classified as a hazardous material under Section 172.101 of the Hazardous Materials Regulations (HMR) (49 C.F.R. 172.101).
3. The proper shipping name for this material is "Fireworks, special" which is in the Class B explosive hazard class.
4. Propellant explosive is classified as a hazardous material under Section 172.101 of the HMR.
5. The proper shipping name for this material is "Propellant explosive" which is in the Class A explosive hazard class.
6. At all times mentioned herein, Fireworks, special and Propellant explosive are forbidden aboard passenger-carrying aircraft.

By reason of the above, ABC violated the following Department of Transportation Hazardous Materials Regulations:

1. Section 175.30(a)(1) (49 C.F.R. 175.30(a)(1)), in that ABC accepted a hazardous material for transportation aboard an aircraft when the material was not authorized and was not within the quantity limitations specified for carriage aboard aircraft according to Section 172.101 (49 C.F.R. 172.101).
2. Section 175.75(a)(1) (49 C.F.R. 175.75(a)(1)), in that ABC carried on an aircraft a hazardous material contrary to the provisions of Part 172 (49 C.F.R. Part 172).

12/14/88

2150.3A

3. Section 175.20 (49 C.F.R. 175.20), in that ABC, as operator, failed to thoroughly instruct its employees in relation to the applicable Hazardous Materials Regulations.

In accordance with Section 110(a)(1) of the Hazardous materials Transportation Act (49 U.S.C. 1809(a)(1)), ABC is liable for a civil penalty not to exceed \$10,000 for each violation of the regulations. After reviewing our investigative file, including your letter of September 22, 1987, we propose to issue an order assessing a civil penalty in the amount of \$20,000 for these violations.

An Order assessing a civil penalty will be issued as proposed unless, not later than thirty days after the receipt of this notice, ABC elects to proceed in accordance with the alternatives listed on the enclosed election and information forms. A copy of 14 C.F.R. Part 13 is also enclosed for your reference.

Please address all communications to _____, Regulations and Enforcement Division, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, D.C. 20591.

Assistant Chief Counsel

By: _____

Enclosure

**FIGURE 12-19. SAMPLE INFORMATION SHEET
(Hazardous Materials)**

**DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION**

**INFORMATION REGARDING CIVIL PENALTIES
UNDER TITLE 49 U.S.C. SECTION 5123**

*

Under 49 U.S.C. § 5123, any person who violates pertinent provisions of Chapter 51 of the statute, entitled "Transportation of Hazardous Material," or any rule, regulation, or order issued thereunder, is subject to a civil penalty for each violation. The maximum assessment for each violation is also prescribed by law, as specified in the notice to which this information sheet is attached. The notice also states the amount of the proposed civil penalty for the alleged violation(s).

This proceeding is governed by the Federal Aviation Regulations (FAR) set forth in 14 C.F.R. § 13.16 and 14 C.F.R. Part 13, Subpart G. Copies of these regulations are enclosed. WITHIN THIRTY (30) DAYS AFTER YOU RECEIVE THE NOTICE OF PROPOSED CIVIL PENALTY, you may elect to proceed in one or more of the following ways by marking the appropriate box(es) on the attached election sheet and returning it by mail or personal-delivery to the address provided below. An explanation of each option is set forth below.

1. You may submit the amount of the civil penalty specified in the notice by certified check or money order payable to the "Federal Aviation Administration." SUBMITTING THE AMOUNT OF THE CIVIL PENALTY CONSTITUTES YOUR AGREEMENT THAT AN ORDER ASSESSING CIVIL PENALTY IN THAT AMOUNT MAY BE ISSUED WITHOUT FURTHER NOTICE. SUBMITTING THE AMOUNT OF CIVIL PENALTY ALSO CONSTITUTES YOUR AGREEMENT THAT YOU HAVE WAIVED YOUR RIGHT TO A HEARING IN THIS MATTER.

*

*

2. You may submit, in writing, information and evidence demonstrating that a violation of the regulations was not committed or that, if it were, the facts and circumstances do not warrant a civil penalty or the amount of the civil penalty proposed. Information provided will be considered in determining whether a civil penalty should be imposed and the amount of any such civil penalty. This information may be submitted in conjunction with a request for informal conference under paragraph 5. Choosing this option will not affect your right to a hearing unless you also elect paragraph 4. If you also elect paragraph 4, your offer will be considered and will constitute your agreement that an Order Assessing Civil Penalty in the amount you specified may be issued without further notice.

3. You may submit, in writing, information and records indicating that you are financially unable to pay the proposed civil penalty, or showing that payment of the proposed penalty would prevent you from continuing in business. Choosing this option will not affect your right to a hearing unless you also elect paragraph 4.

4. You may request that a civil penalty be assessed in a specific amount other than that proposed in the notice. If you choose this option, you should also explain why a reduction is appropriate and provide any supporting documentation. Information you provide will be considered in determining whether the amount you specified should be assessed. If the FAA accepts your offer, your request constitutes your agreement that an Order Assessing Civil Penalty in that amount may be issued without further notice, and that you waive your right to a hearing. If the FAA does not accept your offer, your right to a hearing will not be affected.

5. You may request an opportunity to discuss the matter with an FAA attorney by a telephonic informal conference, or at an in-person informal conference at one of the following locations: an FAA regional office; the FAA Aeronautical

*

*

Center in Oklahoma City; the FAA Southern Region Branch Office in Orlando, Florida; or FAA Headquarters in Washington, DC. A list of the addresses of these offices (hereafter referred to as "the Informal Conference Location list" or "the list") is attached to the enclosed reply form.

A request for an in-person informal conference at any of the offices on the Informal Conference Location list will be granted, regardless of whether the office you choose is the office that issued the notice to which this information sheet is attached.

If you choose an office on the Informal Conference Location list other than the office that issued the notice, the case ordinarily will be transferred to the office you request for full disposition and handling in accordance with the FAA's existing transfer policy, which is set forth in paragraph 208(e) of FAA Order No. 2150-3A, *provided that*

- (1) a transfer is in the public interest, and
- (2) the transfer is to an office more convenient to your domicile or principal place of business.

When conditions (1) and (2) are not present, the case will be transferred to the office you request for purposes of the informal conference only. Moreover, the office receiving the case only for purposes of the informal conference will consult and coordinate with the office that issued the notice before settling or otherwise disposing of the case after the informal conference.

You also may request an in-person informal conference at an FAA office other than those on the Informal Conference Location list. If you do so, you should indicate on the response form your reason for requesting that particular location. NOTE: Requests for in-person informals at locations not on the list will be granted only in very limited circumstances. You should not, therefore, expect to have an in-person informal conference at a location other

*

*

than those on the list. The FAA attorney assigned to your case has discretion to grant a request for an in-person informal conferences at a location other than those on the list only when (1) because of unusual circumstances, the public interest is better served by holding an in-person informal conference at such location, or (2) an in-person informal conference can be scheduled to coincide with other previously scheduled business at the location requested. In addition, the FAA attorney must be able to schedule the conference within approximately 90 days of the date you request an informal conference. Because of these restrictions, you are requested to indicate both the FAA office you prefer and one of the offices from the Informal Conference Location list.

To elect a telephone informal conference, choose option 5.a. on the reply form. To elect an in-person informal conference at one of the locations on the Informal Conference Location list, choose option 5.b. To elect an in-person informal conference at a location other than those on the list, choose option 5.c.

IF YOU REQUEST AN INFORMAL CONFERENCE WITH AN FAA ATTORNEY, DO NOT ALSO REQUEST A FORMAL HEARING UNDER § 13.16 OF THE FAR AT THIS TIME (i.e., option 7). YOUR REQUEST FOR AN INFORMAL CONFERENCE WILL NOT AFFECT YOUR RIGHT TO REQUEST A FORMAL HEARING LATER.

IMPORTANT: The informal conference is intended to provide you with an opportunity to present your reasons why the FAA should not proceed with the action as proposed. It also is intended to provide you with an opportunity to present any supporting documentation or information you wish the FAA to consider before the agency decides whether to proceed with the proposed action. Any additional information you submit will be given our careful consideration. Since the attached letter may become a part of the publicly available records, you may wish to submit a letter which would be included in these records.

*

*
6. You may request a hearing in accordance with section 13.16 of the FAR. Your request must be dated and signed. If you request a hearing, a Complaint will be filed and an administrative law judge will be appointed to decide the case. At a hearing, held under Subpart G of 14 C.F.R. Part 13, the agency will present witnesses and other evidence. You also will have the opportunity to present witnesses and other evidence. The FAA will have the burden of proof. At the conclusion of the hearing, all issues of fact and law will be decided and a decision will be rendered whether, and in what amount, a civil penalty will be assessed. If either party, the agency or you, is dissatisfied with the judge's decision, that party can appeal the judge's decision to the FAA decisionmaker. If you are dissatisfied with the FAA decisionmaker's decision, you may seek review of the FAA decisionmaker's decision in an appropriate United States district court.

Your request for a hearing must be made to the Hearing Docket, Federal Aviation Administration, 800 Independence Avenue, SW., Room 924A, Washington, DC, 20591, Attention: Hearing Docket Clerk. You must mail a copy to the FAA attorney handling this case at the address indicated below.

Please address all communications in this matter to the FAA attorney specified in the Notice at the following address:

Office of the Assistant Chief Counsel
ADDRESS

Your response to the Notice of Proposed Civil Penalty may be delivered personally to the Office of the Assistant Chief Counsel for the _____ Region at the above address during normal business hours.

Telephone: _____ (Collect calls cannot be accepted).

10/30/96

If you are an individual:

PRIVACY ACT NOTICE

This notice is provided in accordance with Section (e)(3) of the Privacy Act, 5 U.S.C. § 552a(e)(3), and concerns the information requested in the letter or form with which this notice is enclosed.

A. Authority. This information is solicited pursuant to 49 U.S.C. §§ 40101, et seq., and regulations issued thereunder codified in Part 13 of Title 14 of the Code of Federal Regulations. Submitting your telephone number is voluntary. The request for information is intended to provide you with an opportunity to participate in the investigation.

B. Principal purpose. The requested information is intended to assist us in contacting you regarding this enforcement case.

C. Routine uses. Records from this system of records may be disclosed in accordance with the routine uses set forth in System of Records No. DOT/FAA 847, as published from time to time in the Federal Register.

D. Effect of failure to respond: If you do not provide the requested information, there may be delay in contacting you regarding this enforcement case, and you may forfeit your right to a hearing on the merits of this case.

**FIGURE 12-20. SAMPLE REPLY TO NOTICE OF PROPOSED CIVIL
PENALTY (HAZARDOUS MATERIALS)**

*

Date _____

Office of the Assistant Chief Counsel
Federal Aviation Administration
ADDRESS

Subject: Notice of Proposed Civil Penalty (HM)

In reply to your Notice of Proposed Civil Penalty, I elect to proceed as indicated by my check mark beside the numbered paragraph(s) below:

1. ☐ I hereby submit the amount of the proposed civil penalty with the understanding that an order assessing a civil penalty will be issued in that amount without further notice. I understand that I have waived my right to a hearing.
2. ☐ I hereby submit evidence and information, demonstrating that a violation of the regulations did not occur as alleged or that the amount of the penalty is not warranted by the circumstances.
3. ☐ I hereby submit information and records showing that I am financially unable to pay the proposed civil penalty, or that payment of the penalty would prevent me from continuing in business.
4. ☐ I hereby request that the proposed civil penalty be assessed in the amount of \$_____ and I submit the reasons for the reduction of the proposed amount. My request constitutes my agreement that if this offer is accepted by the FAA, an order assessing civil penalty in the amount I have specified may be issued without further notice. My request also constitutes my agreement that I have waived my right to a hearing.

*

*

5.a. [] I hereby request a telephonic informal conference to discuss this matter with an FAA attorney. (An attorney will call you at the telephone number you provide here:

() _____. You will be provided at least 2 weeks advance notice of the date and time of this conference.)

NOTE: If you choose to discuss this matter informally by telephone, you should provide any documents or other information you wish to have considered on your behalf before the date of the informal conference.

b. [] I hereby request an in-person informal conference with an FAA attorney to discuss this matter at

_____. (choose an FAA office from the attached list).

c. [] I hereby request an in-person informal conference with an FAA attorney to discuss this matter at

_____. I am requesting an in-person informal conference at this location because

I have also indicated an alternate location from the attached list under item 5.b. in the event the FAA is unable to grant my request under this option.

6. [] I hereby request that the FAA propose a civil penalty without making findings of violations, and submit my reasons in support of this request. My request constitutes my agreement that if this order is accepted, a Compromise Order will be issued in that amount and I waive my right to a hearing.

7. [] I hereby request a hearing in accordance with Subpart G of Part 13 of the Federal Aviation Regulations (14 CFR 13, Subpart G) with the understanding that a Complaint will be filed. I request that the hearing be held in _____. I am sending this request both to the FAA attorney and to the Hearing Docket, Federal Aviation

*

7/16/96

*

Administration, 800 Independence Avenue, SW., Room 924A,
Washington, DC, 20591, Attention: Hearing Docket Clerk.

Signature: _____
Name: _____
Address: _____

Telephone: _____
Date: _____
Case No.: _____

[] I request that future documents in this case be sent to
my representative:

Name: _____
Address: _____

Telephone: _____

*

**FIGURE 12-21. SAMPLE ORDER OF CIVIL PENALTY
(Hazardous Materials Transportation Act)**

July 22, 1988

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

ABC Airlines, Inc.
P.O. Box 5200
Jonesboro, Arkansas 72401

RE: Case No. 87WP123456; Docket No. 87-00 (HM)

ORDER OF CIVIL PENALTY

On January 22, 1988, ABC was advised through a Notice of Proposed Civil Penalty that the FAA proposed to assess a civil penalty in the amount of \$20,000.

After consideration of all of the available information, it has been determined that:

1. On or about May 15, 16, and 17, 1988, ABC, Inc., (ABC) accepted, and transported aboard a passenger-carrying flight, a shipment of approximately 30 pounds of special fireworks and approximately 200 pounds of propellant explosive from Los Angeles, California, to Las Vegas, Nevada.
2. Special fireworks is classified as a hazardous material under Section 172.101 of the Hazardous Materials Regulations (HMR) (49 C.F.R. 172.101).
3. The proper shipping name for this material is "Fireworks, special," which is in the Class B explosive hazard class.
4. Propellant explosive is classified as a hazardous material under Section 172.101 of the HMR.
5. The proper shipping name for this material is "Propellant explosive," which is in the Class A explosive hazard class.
6. At all times mentioned herein, Fireworks, special and Propellant explosive are forbidden aboard passenger-carrying aircraft.

By reason of the above, ABC violated the following Department of Transportation Hazardous Materials Regulations:

1. Section 175.30(a)(1) (49 C.F.R. 175.30(a)(1)), in that ABC accepted a hazardous material for transportation aboard an aircraft when the material was not authorized and was not within the quantity limitations specified for carriage aboard aircraft according to Section 172.101 (49 C.F.R. 172.101).

2. Section 175.75(a)(1) (49 C.F.R. 175.75(a)(1)), in that ABC carried on an aircraft a hazardous material contrary to the provisions of Part 172 (49 C.F.R. Part 172).

3. Section 175.20 (49 C.F.R. 175.20), in that ABC, as operator, failed to thoroughly instruct its employees in relation to the applicable Hazardous Materials Regulations.

NOW, THEREFORE, IT IS ORDERED, pursuant to Section 110(a)(1) of the Hazardous Materials Transportation Act (49 U.S.C. 1809(a)(1)), and Section 901(a)(1) of the Federal Aviation Act of 1958, as amended, (49 U.S.C. 1471(a)(1)), that ABC be and hereby is subject to a civil penalty in the amount of \$20,000.

Assistant Chief Counsel

By: _____

ANSWER

You must answer this Order, which serves as the Complaint in this proceeding, not later than 30 days from the time it is served on you in accordance with Section 13.209 of the Rules of Practice for FAA Civil Penalty Actions (14 C.F.R. §13.209(f)). Failure to file an answer within 30 days will be deemed an admission of the truth of the allegations set forth in this Order and an Order Assessing Civil Penalty shall be issued.